

**MARGULIS GELFAND
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Via ECF

Hon. Robyn F. Tarnofsky
Magistrate Judge
United States District Court, Southern District of New York
500 Pearl Street, Room 703
New York, NY 10007

Re: *Gagliardi, et al. v. Prager Metis CPAs, LLC, et al.*; Case No. 23-cv-07454 (JGLC)

Dear Judge Tarnofsky:

I have reviewed the Defendants' memorandum (Doc. # 63-3), and having reviewed the Circuit's decision in *Matimak Trading Co. v. Khalily*, 118 F.3d 76, 85 (2d Cir. 1997), *abrogated by JPMorgan Chase Bank v. Traffic Stream (BVI) Infrastructure Ltd.*, 536 U.S. 88 (2002) (noting that the terms "citizen" and "subject" do not connote a different degree of attachment/allegiance to a foreign state, instead, the terms are meant to encompass persons living under distinct forms of government: a monarchy has "subjects," while a republic has "citizens"). Accordingly, I believe that the Defendants are correct that Mr. Gagliardi, as a U.S. citizen residing in the U.K., destroys diversity jurisdiction.

However, the Plaintiffs desire to amend their complaint. While the undersigned needs to conduct further legal research it appears that, at a minimum, Mr. Gagliardi can be dropped as a plaintiff leaving Mrs. Gagliardi to prosecute this case. Mrs. Gagliardi is a citizen of Italy (the undersigned has a copy of her Italian passport), residing in the U.K. (and is *not* an American citizen). This would result in a foreign national being adverse to American nationals (i.e. the Defendants as "citizens" of New York, New Jersey, North Carolina, South Carolina, California, and Connecticut). *See* Doc. # 63-1 at ¶19. In the alternative, the undersigned is reaching and considering filing a Second Amended Complaint alleging jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction).

I would ask for two weeks (i.e. August 9th) to file a Second Amended Complaint.

Kind Regards,

/s/ Joseph A. DiRuzzo, III

Joseph A. DiRuzzo, III
cc: counsel of record via ECF only